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DEAN ANDAL and DONALD WOLFE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

DEAN ANDAL, an individual;
DONALD WOLFE, an individual,
Plaintiffs and Petitioners,

v.

KATHLEEN CONNELL, in her official
capacity as California State Controller;
B. TIMOTHY GAGE, in his official
capacity as Director, California State
Department of Finance ; MILBERG
WEISS BERSHAD HYNES &
LERACH LLP; a limited liability
partnership; WEISS & YOURMAN, a
partnerhsip; BLUMENTHAL,
OSTROFF & MARKHAM, a
partnership; SULLIVAN HILL LEWIN
REZ & ENGEL, a professional law
corporation; RICHARD M. PEARL, an
individual,
Defendants and Respondents.

Case No. 01CS00076

Assigned to: Hon. Joe S. Gray

**FIRST AMENDED VERIFIED
COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF, AND
PETITION FOR WRIT OF MANDATE**

[C.C.P §§ 1060, 526(a), 1085]

Plaintiffs and Petitioners Dean Andal and Donald Wolfe (“plaintiffs”) allege as follows:

INTRODUCTION

1. Plaintiffs bring this action to stop the Director of the California State Department of Finance and the California State Controller from paying \$88,479,713 from the California State Treasury to five law firms. These law firms demand that the State of California pay them this money pursuant to an arbitration award made by three arbitrators on November 28, 2000.

2. Any power the arbitrators had to make this \$88,479,713 arbitration award was granted by the California Legislature in the last sentence of Revenue and Taxation Code section 6909, subdivision (b) (“the last sentence of section 6909(b)”). What power, if any, this sentence granted to the arbitrators, whether the arbitrators’ award is enforceable against the State of California and whether this sentence appropriated money from the State Treasury to pay this award or any award of attorneys’ fees to the law firms are the issues in this action.

3. Plaintiffs contend that the last sentence of section 6909(b) violates the California Constitution, and that by its enactment the Legislature granted to the arbitrators neither the power to award \$88,479,713 to the law firms nor the power to appropriate the money to pay this award from the State Treasury. In enacting the last sentence of section 6909(b), the Legislature violated the following sections of the California Constitution:

- Article III, section 3, Article IV, section 1 and Article XVI, section 7, because the Legislature attempted to delegate its power to appropriate money from the California State Treasury to arbitrators;
- Article XVI, section 6, because the Legislature authorized arbitrators to make a gift of public money to the law firms;
- Article IV, section 17, because the Legislature authorized the payment of a claim against the State which is based on a contract not authorized by law;

- Article IV, section 16(b) because the last sentence of Revenue and Taxation Code section 6909(b) is an invalid special statute;
 - Article IV, section 9 because the subject of the last sentence of section 6909(b) is not described in the title of the statute of which it is a part.
4. Plaintiffs further contend that regardless of the constitutionality of the last sentence of section 6909(b) the arbitration award is unenforceable against the State of California because:
- this Court is without jurisdiction to confirm the arbitration award and amend the final judgment in *Jordan v. Department of Motor Vehicles*, Sacramento County Superior Court, Case No. 95AS05228, to increase its attorneys' fees order from \$18,194,319.92 to \$88,479,713;
 - any action to obtain a judgment to confirm the arbitration award would be barred by either res judicata, direct estoppel or collateral estoppel;
5. Plaintiffs further contend that regardless of the constitutionality of the last sentence of section 6909(b) that this sentence does not appropriate any money to pay any attorneys' fees award made to the law firms.

THE PARTIES

6. Plaintiff and petitioner Dean Andal is an elected member of the California State Board of Equalization. The Board of Equalization is responsible for the administration of certain State taxes and fees, including sales and use taxes, and taxes and fees related to fuel, alcohol, and tobacco. These taxes and fees fund the operation of government in California, including schools, courts, highways, and waterworks. Plaintiff Andal's official duties include constitutional and fiduciary responsibilities to protect the fisc of the State of California. In taking his oath of office, plaintiff Andal swore to uphold the Constitution of the State of California and the Constitution of the United States. Plaintiff Andal also has an interest in the fisc of the State because he is a California resident and a California taxpayer.

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7. Plaintiff and petitioner Donald Wolfe is a member of the Board of Trustees of the West Valley-Mission Community College District in Santa Clara County. This community college district serves approximately 25,000 students and has an annual operating budget of approximately \$95,000,000. The majority of its budget comes from the State of California. As a member of the Board of Trustees, Plaintiff Wolfe is concerned about the fiscal health of the college district and of the State. In taking his oath of office, plaintiff Wolfe swore to uphold the Constitution of the State of California and the Constitution of the United States. Plaintiff Wolfe is also the former mayor of Saratoga, California and has an interest in the fisc of the State because he is a California resident and a California taxpayer.

8. Defendant and respondent Kathleen Connell is the California State Controller (“defendant State Controller”). Among her duties, Defendant State Controller has a ministerial duty to refrain from drawing warrants on the State Treasurer for the payment of money out of the State Treasury unless authorized by law and unless there is an unexhausted specific appropriation provided by law.

9. Defendant and respondent B. Timothy Gage is the Director of the California State Department of Finance (“defendant Director of Finance”). Among his duties, Defendant Director of Finance has a ministerial duty to certify that there is a sufficient appropriation for the payment of a judgment or settlement against the State of California. This duty arises only if there exists a sufficient appropriation made by law and only if the settlement or judgment is valid.

10. Defendants and respondents Milberg Weiss Bershad Hynes & Lerach LLP, Weiss & Yourman, Blumenthal Ostroff & Markham, Sullivan Hill Lewin Rez & Engel, and Richard M. Pearl are lawyers and law firms (collectively “defendant Law Firms”).

THE FACTS

11. In 1990, the Legislature enacted Chapter 1362 of the California Statutes.

This Chapter imposed a motor vehicle smog impact fee of \$300 on certain motor vehicles (“smog impact fee”). Prior to and after the enactment of the smog impact fee, the California Legislative Counsel opined that this fee was probably unconstitutional. (A copy of Chapter 1362 is attached hereto as Exhibit 1 and incorporated herein, and a copy of the Legislative Counsel opinions are attached hereto and incorporated herein as Exhibit 2.)

12. On October 27, 1997, this Court, in the case of *Jordan et al. v. California Department of Motor Vehicles et al.* (“*Jordan*”), entered a final judgment in favor of four people (“*Jordan* plaintiffs”) who had sued the Department of Motor Vehicles (“DMV”), the State Board of Equalization (“BOE”) and the State of California (“State”)(collectively “the *Jordan* defendants”) for a refund of the smog impact fee. Defendant Law Firms, except Richard Pearl, represented the *Jordan* plaintiffs. This Court ruled that the imposition of the smog impact fee violated the California Constitution and the United States Constitution, and that the *Jordan* plaintiffs were entitled to a refund of the \$300 smog impact fee that each had paid. In that judgment, this Court also ordered the *Jordan* defendants to enter claims for refunds on behalf of each person who paid the smog impact fee after October 27, 1997, and to file claims for refunds, either individually or as a class, for each person who had paid the smog impact fee between September 19, 1992 and October 27, 1997. Defendant Law Firms used the Legislative Counsel Opinions in Exhibit 2 to assist them in litigating *Jordan*. (A copy of this Court’s judgment in *Jordan* is attached hereto as Exhibit 3 and incorporated herein.)

13. Thereafter, the *Jordan* defendants appealed the *Jordan* final judgment, and the defendant Law Firms moved for attorneys’ fees.

14. On July 27, 1998, this Court entered its “Amended Findings of Fact and Order Regarding Attorneys’ Fees and Expenses.” in *Jordan*. This Court found that the litigation efforts by defendant Law Firms in *Jordan* had created a “common fund” on behalf of the payers of the smog tax and that the defendant Law Firms were entitled to be

paid fees from this fund. This Court further found that the amount in the “common fund” was \$363,886,398.44. Defendant Law Firms requested that they be paid 5% of this amount and this Court granted their request and awarded them \$18,194,319.92 in attorneys’ fees and expenses. (“the attorneys’ fees order”) (The attorneys’ fee order is attached hereto as Exhibit 4 and incorporated herein.)

15. The *Jordan* defendants appealed the attorneys’ fees order. The defendant Law Firms did not appeal the attorneys’ fees order.

16. On October 1, 1999, the Third District Court of Appeal decided *Jordan v. California Department of Motor Vehicles* (1999) 75 Cal.App.4th 449. The Court of Appeal affirmed this Court’s holding that the smog impact fee was unconstitutional, and it affirmed the refund of the smog impact fee to the *Jordan* plaintiffs. The *Jordan* plaintiffs’ refund totaled \$1,200 plus interest. However, the Court of Appeal reversed this Court’s decision ordering the *Jordan* defendants to enter claims for refunds of the smog impact fee for everyone who had paid the fee since 1992. Therefore, the “common fund” upon which this Court based the attorneys’ fees order no longer existed. The *Jordan* defendants’ appeal of the attorneys’ fees order was not decided by this decision because it was a separate appeal.

17. On June 8, 2000, Senate Bill 215 was enacted as Chapter 32 of the California Statutes of 2000 (“Chapter 32”). Chapter 32 repealed the \$300 smog impact fee and added section 6909 to the Revenue and Taxation Code (“section 6909”). In section 6909(a), the Legislature transferred \$665,261,000 from the General Fund to the newly created Smog Impact Fee Refund Account in the Special Deposit Fund. In section 6909(b), the Legislature appropriated this money “for the purpose of making refunds to persons who paid the smog impact fee,” including any penalties and interest. In section 6909(e), the Legislature declared that the \$665,261,000 appropriated under 6909(b) is a “refund of taxes.” In section 6909(d), the Legislature declared that any of the \$665,261,000 appropriation which remained in the Smog Impact Fee Refund Account on

June 30, 2004 shall revert to the General Fund. (A copy of Chapter 32 is attached hereto as Exhibit 5 and incorporated herein.)

18. The \$665,261,000 appropriation in section 6909(b) equals the approximate total amount of the smog impact fees, including any penalties incurred, paid by the approximately 1.7 million people who paid the fee since its enactment and interest on these fees and penalties. This amount was calculated by the DMV. (A copy of a spreadsheet from the DMV which shows how the amount was calculated is attached hereto as Exhibit 6 and incorporated herein.)

19. The last sentence of Revenue and Taxation Code section 6909, subdivision (b) (“the last sentence of section 6909(b)”) says:

In addition, the appropriate level of court costs, fees, and expenses in the settlement of the case of *Jordan v. Department of Motor Vehicles* (1999) 75 Cal.App.4th 449, shall be determined through binding arbitration, and all of those fees, costs, or expenses shall be paid with funds from the account.

The last sentence of section 6909(b) was added to Senate Bill 215 on May 23, 2000. (A copy of amended Senate Bill 215 is attached hereto as Exhibit 7 and incorporated herein.) Between July 1, 2000 and September 30, 2000, Milberg Weiss Bershad Hynes & Lerach LLP, one of the defendant Law Firms, paid lobbyist Richard Damm \$45,750 for his work lobbying the Legislature about certain bills including Senate Bill 215 and a related bill, Assembly Bill 809. (A copy of “Report of Lobbyist Employer” is attached hereto as Exhibit 8 and incorporated herein.)

20. On July 23, 2000, Deputy Attorney General Michael Cornez, Esq., on behalf of the *Jordan* defendants executed a document entitled, “Agreement to Arbitrate Amount of Attorney Fees” (“arbitration agreement”). The arbitration agreement provided that the *Jordan* defendants’ authority for entering into the arbitration agreement is the last sentence of section 6909(b). (A copy of this document is attached hereto and incorporated herein as Exhibit 9.)

21. On August 15, 2000 the *Jordan* defendants' appeal of the attorneys' fees order was dismissed.

22. On November 13 and 14, 2000, arbitration hearings were held before Chief Justice Malcolm M. Lucas (Retired), Justice John K. Trotter (Retired) and Judge Bonnie Lee Martin (Retired) (collectively "arbitrators"). The only evidence presented and accepted by the arbitrators at the hearings was the expert opinion testimony of six lawyers. These lawyer-experts gave their opinions as to the law relating to the award of attorney fees.

23. On November 28, 2000, the arbitrators issued a document entitled "Arbitration Award for Attorney Fees" ("arbitration award"). (A copy of the arbitration award is attached hereto and incorporated herein as Exhibit 10.) The final paragraph of the arbitration award says in part:

Pursuant to California Revenue and Taxation Code section 6909, subdivision (b) the Arbitration Panel awards 13.3% of the \$665,261,000 Smog Impact Fee Refund fund, namely, the sum of \$88,479,713 inclusive of attorney fees, costs and expenses to Claimants [defendant Law Firms] in settlement of Jordan v. Department of Motor Vehicles (1999) 75 Cal.App.4th 449.

The arbitrators relied on the common fund doctrine and determined that the common fund created by defendant Law Firms was the \$665,261,000 appropriation made by the Legislature in Chapter 32.

24. On December 28, 2000, the arbitrators voted 2-1 to refuse the *Jordan* defendants' request to reconsider the arbitration award. Chief Justice Malcolm Lucas dissented because he thought that the arbitration award may violate public policy as an award of attorney fees for lobbying efforts and that if the arbitration award was such an award for lobbying efforts then it would constitute a gift of public money to the defendant Law Firms. (A copy of the majority decision is attached hereto as Exhibit 11 and

incorporated herein, and a copy of Chief Justice Lucas' dissent is attached hereto as Exhibit 12 and incorporated herein.)

25. On January 4, 2001, Leonard Simon, a member of one of the Defendant Law Firms, transmitted to Deputy Attorney General Michael Cornez, by facsimile, a demand that the State pay the \$88,479,713 arbitration award. In that facsimile, Mr. Simon said that "the State has no justifiable legal basis on which to rely for not complying with the decision [arbitration award]." Mr. Simon threatened that "any interest [on the arbitration award] that the State is required to pay should ultimately be borne by the individuals actually making this irresponsible decision [to pursue all legal avenues to have the arbitration award reviewed]." (A copy of Mr. Simon's facsimile is attached hereto as Exhibit 13 and incorporated herein.)

FIRST CAUSE OF ACTION

Declaratory Relief (C.C.P. § 1060)

26. Plaintiffs incorporate herein each of the allegations of paragraphs 1 through 25.

27. Plaintiffs contend that section 6909 neither authorizes defendant Director of Finance to certify that there is a sufficient appropriation for the payment of the arbitration award or the attorneys' fees order nor authorizes defendant State Controller to draw a warrant on the State Treasurer to pay the arbitration award or the attorneys' fees order out of the State Treasury for any or all of the following reasons:

- (a) section 6909(b) only appropriates money for the purpose of making refunds of the smog impact fee, including penalties and interest;
- (b) the last sentence of section 6909(b) is not an appropriation made by law;
- (c) the last sentence of section 6909(b) violates article III, section 3 article IV, section 1 and article XVI, section 7 of the California Constitution because with this sentence the Legislature attempted to delegate to

arbitrators its power to make law and appropriate money from the State Treasury to pay the defendant Law Firms;

(d) the last sentence of section 6909(b) violates article XVI, section 6 of the California Constitution because it authorizes the arbitrators to make a gift of public money to the defendant Law Firms;

(e) the last sentence of section 6909(b) violates article IV, section 17 of the California Constitution because it authorizes the payment of a claim against the State which is based upon an agreement not authorized by law;

(f) the last sentence of section 6909(b) violates article IV, section 16, subdivision (b), of the California Constitution because it is an invalid special statute;

(g) the last sentence of section 6909(b) violates article IV, section 9 of the California Constitution because its subject, the award of attorneys' fees and the appropriation of money from the State Treasury through binding arbitration, is not described in the title of Chapter 32;

(h) the last sentence of section 6909(b) is severable from the remainder of section 6909; and

28. Plaintiffs further contend that the arbitration agreement is void because the Deputy Attorney General's power to enter into this agreement comes from the last sentence of section 6909(b) which is unconstitutional.

29. Plaintiffs further contend that the arbitration award is void for any or all of the following reasons:

(a) the arbitrators' power to make the arbitration award comes from the last sentence of section 6909(b) which is unconstitutional;

(b) the arbitration award violates public policy because it awards fees to the defendant Law Firms fees for their lobbying efforts, rather than for their litigation efforts; and

(c) \$88,479,713 is not an appropriate level of fees, court costs and expenses for the settlement of *Jordan*.

30. Plaintiffs further contend that the arbitration award is unenforceable because this Court is without jurisdiction to amend the final judgment in *Jordan* to confirm the arbitration award and thereby increase the attorneys' fees order from \$18,194,319.92 to \$88,479,713, and because any other action to obtain a judgment to confirm the arbitration award would be barred by either *res judicata*, direct estoppel or collateral estoppel.

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31. Plaintiffs further contend that the last sentence of 6909(b) is not an appropriation made by law.

32. Defendant State Controller and defendant Director of Finance contend that, unless otherwise ordered by a court, they must proceed with the payment of this arbitration award.

33. Defendant Law Firms contend that the last sentence of section 6909(b) is constitutional and that the arbitration award is valid and that the officers of the State of California must do everything necessary to satisfy the \$88,479,713 arbitration award, and these officers will be held personally responsible for any delay in payment of the award.

34. An actual controversy has arisen and now exists between the plaintiffs and the defendants concerning their respective rights and duties in regard to the validity of the arbitration award.

35. Plaintiffs desire a declaration of the duties of defendant State Controller and the duties of defendant Director of Finance with respect to the constitutionality of the last sentence of section 6909(b) and the validity of the arbitration award and ask this Court to make a declaration of such duties and to make a declaration as to the constitutionality of the last sentence of section 6909(b) and the validity of the arbitration award. Plaintiffs desire a declaration that there is no appropriation for defendant Director of Finance to certify and that defendant State Controller is not authorized by law to draw a warrant

upon the State Treasurer from the State Treasury to pay the arbitration award because:

- (a) the last sentence of section 6909(b) is not an appropriation made by law;
- (b) the last sentence of section 6909(b) violates the California Constitution and is therefore void;
- (c) the arbitration award is void; and
- (d) the arbitration agreement is void; and
- (e) the arbitration award is unenforceable because this Court is without jurisdiction to amend the final judgment in *Jordan* to confirm the arbitration award and thereby increase the attorneys' fees order from \$18,194,319.92 to \$88,479,713, and because any other action to obtain a judgment to confirm the arbitration award would be barred by either res judicata, direct estoppel or collateral estoppel.

36. A timely declaration by this Court is urgent because the State Treasury will suffer irreparable harm if defendant Director of Finance certifies that there is a sufficient appropriation for payment of the arbitration award and defendant State Controller draws a warrant upon the State Treasurer for the payment of the arbitration award out of the State Treasury, and because the defendant Law Firms have threatened to hold State officers, who are responsible for delaying the payment of the arbitration award, personally liable for any interest the arbitration award may accrue as a result of the delay that the officers may cause. Plaintiff Andal, defendant State Controller and defendant Director of Finance are State officers.

SECOND CAUSE OF ACTION

Taxpayer Action for an Injunctive Relief (C.C.P. § 526(a))

37. Plaintiffs incorporate herein by reference all of the allegations of paragraphs 1 through 25, and 27 through 36, as if set forth in full.

38. Plaintiffs have paid taxes to the State of California within the past year.

39. Defendant Director of Finance has a ministerial duty to refrain from certifying that there is sufficient appropriation to pay a settlement or judgment unless there has been an appropriation made by the Legislature to pay the settlement or judgment.

40. Defendant State Controller has a ministerial duty to refrain from drawing warrants upon the State Treasurer for payment of money out of the State Treasury unless authorized by law and unless there is a specific appropriation provided by law.

41. Defendant Law Firms intend to force the defendant Director of Finance to certify that there is a sufficient appropriation to pay the arbitration award even though there is no appropriation to pay the award and even though the award is void and unenforceable.

42. Defendant Law Firms intend to force defendant State Controller to draw a warrant upon the State Treasurer to pay the arbitration award from the State Treasury even though such a warrant is not authorized by law and even though there is no specific legal appropriation from which to satisfy the arbitration award.

43. Plaintiffs have no plain, speedy, and adequate remedy at law.

THIRD CAUSE OF ACTION

Writ of Mandate (C.C.P. § 1085)

44. Plaintiffs incorporate herein by reference each of the allegations of paragraphs 1 through 25, 27 through 36, and 38 through 43, as if set forth in full.

45. Defendant Director of Finance has a ministerial duty to refrain from certifying that there is sufficient appropriation to pay a settlement or judgment unless there has in fact been a sufficient appropriation made by law to pay the settlement or judgment.

46. Defendant State Controller has a ministerial duty to refrain from drawing warrants upon the State Treasurer for payment out of the State Treasury unless authorized by law and unless there is a specific appropriation made by law.

47. Plaintiffs, as public officers and taxpayers, have a beneficial interest in the moneys belonging to the State of California and they have a beneficial interest in the actions of defendant Director of Finance and the defendant State Controller as they relate to the protection of these public moneys. Plaintiffs, as California citizens and taxpayers, are concerned that defendant State Controller and defendant Director Finance perform their duties under the law.

48. Defendant Law Firms intend to force defendant Director of Finance to certify that there is a sufficient appropriation to pay the arbitration award even though there is no appropriation made by law to pay the arbitration award or the attorneys' fees order and even though the award is void.

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49. Defendant Law Firms intend to force defendant State Controller to draw a warrant upon the State Treasurer to pay the arbitration award from the State Treasury even though such a warrant is not authorized by law and even though there is no specific legal appropriation made by law from which to pay the arbitration award or the attorneys' fees order and even though the arbitration award is void.

50. Plaintiffs have no plain, speedy, and adequate remedy at law.

WHEREFORE, Plaintiffs pray for judgment as follows:

As to the First Cause of Action

1. That this Court declare that:
 - (a) the last sentence of subdivision (b) of Revenue and Taxation Code section 6909 is not an appropriation made by law;
 - (b) the last sentence of Revenue and Taxation Code section 6909, subdivision (b) is unconstitutional because it violates certain sections of the California Constitution, including Article III, section 3; Article IV, section 1; Article IV, section 9; Article IV, section 16, subdivision (b); Article IV,

section 17; Article XVI, section 6; Article XVI, section 7;

(c) the last sentence of Revenue and Taxation Code section 6909, subdivision (b) is severable from section 6909;

(d) the arbitration agreement is void because it is based on the last sentence of Revenue and Taxation Code section 6909, subdivision (b) which is unconstitutional;

(e) the arbitration award is void because it is based on the last sentence of Revenue and Taxation Code section 6909, subdivision (b) which is unconstitutional;

(f) the arbitration award is void because it violates public policy;

(g) the arbitration award is void because it is not an appropriate level of fees, court costs and expenses for the settlement of *Jordan*;

(h) the arbitration award is not enforceable against the Department of Motor Vehicles, the State Board of Equalization or the State of California because this Court is without jurisdiction to amend the final judgment in *Jordan* to confirm the arbitration award and thereby increase the attorneys' fees order from \$18,194,319.92 to \$88,479,713, and because any other action to obtain a judgment to confirm the arbitration award would be barred by either res judicata, direct estoppel or collateral estoppel.

2. For reasonable attorney fees, including those allowed by Code of Civil Procedure section 1021.5;

3. For costs of suit herein incurred; and

4. For such other and further relief as this Court may deem proper.

As to the Second Cause of Action

1. That this Court issue a temporary restraining order, preliminary injunction and a permanent injunction enjoining defendant Director of Finance from certifying that a sufficient appropriation exists to pay the arbitration award or the attorneys' fees order;

2. That this Court issue a temporary restraining order, preliminary injunction and permanent injunction enjoining defendant State Controller from drawing a warrant upon the State Treasurer for payment out of the state Treasury of any money to pay the arbitration award or the attorneys' fees order;

3. For reasonable attorney fees, including those allowed by Code of Civil Procedure section 1021.5;

4. For costs of suit herein incurred; and

5. For such other and further relief as this Court may deem proper.

As to the Third Cause of Action

1. That this Court issue a peremptory writ of mandate commanding Defendant Director of Finance to refrain from certifying that a sufficient appropriation made by law exists for the payment of the arbitration award or the attorneys' fees order;

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2. That this Court issue an alternative writ of mandate commanding defendant Director of Finance to take the actions specified in the preceding paragraph or show cause before this court why he should not be ordered to do so;

3. That this Court issue a peremptory writ of mandate commanding defendant State Controller to refrain from drawing a warrant upon the State Treasurer for the payment of money out of the State Treasury to pay the arbitration award or the attorneys' fees order;

4. That this Court issue an alternative writ of mandate commanding defendant State Controller to take the actions specified in the preceding paragraph or show cause before this court why she should not be ordered to do so;

5. For reasonable attorney fees, including those allowed by Code of Civil Procedure section 1021.5;

6. For costs of suit herein incurred; and

7. For such other and further relief as this Court may deem proper.

Dated: February 19, 2001

By:

ERIC S. NORBY
Attorney for Plaintiffs and Petitioners DEAN
ANDAL and DONALD WOLFE

VERIFICATION

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)

I have read the foregoing First Amended Verified Complaint for Declaratory Relief, Injunctive Relief, and Petition for Writ of Mandate and know its contents.

I am the attorney for DEAN ANDAL and DONALD WOLFE, Plaintiffs in this action. Such Plaintiffs are absent from the county of aforesaid where I have my offices, and I make this verification for and on behalf of the parties for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 19, 2001, at Irvine, California.

Eric S. Norby

INDEX OF EXHIBITS

TAB	DESCRIPTION
1	Chapter 1362 of the California Statutes of 1990.
2	Letters from the Legislative Counsel of California to: (1) the Honorable Johan Klehs dated July 17, 1990; (2) the Honorable Richard Katz, dated July 10, 1990; and (3) the Honorable Phillip D. Wyman, dated February 25, 1991.
3	Final Judgment in Favor of Plaintiffs and Against Defendants in the Department of Motor Vehicles, the State Board of Equalization, and the State of California, Sacramento County Superior Court Case No. 95AS05228.
4	Amended Findings of Fact and Order Regarding Attorneys' Fees and Expenses, filed July 27, 1998, Sacramento County Superior Court Case No. 95AS05228.
5	Chapter 32 of the California Statutes of 2000.
6	Department of Motor Vehicles Smog Impact Fee Refunds Interest Calculation, printed December 18, 2000.
7	Senate Bill 215, amended in Assembly May 23, 2000.
8	Report of Lobbyist Employer, dated October 30, 2000.
9	Agreement to Arbitrate Amount of Attorneys' fees, executed on July 20 and 23, 2000.
10	Arbitration Award of Attorneys' Fees, dated November 28, 2000.
11	Ruling on Motion for Reconsideration and Modification of Arbitration Award, executed December 28, 2000.
12	Dissent of Chief Justice Malcolm M. Lucas (Ret.) to Denial of Defendants' Request for Reconsideration, executed December 28, 2000.
13	Letter to Michael Cornez, Esq., Department of Justice for the State of California from Leonard B. Simon, Esq., dated January 4, 2001.